

CHAPTER 15: PROJECT PRESERVATION

15.1 INTRODUCTION

Some borrowers may want to prepay their Agency loans and convert their properties to conventional use. To protect the supply of affordable housing and to ensure that tenants of multi-family housing properties do not suffer from rent overburden or lose their units, the Agency requires that borrowers obtain approval before prepaying their loans [7 CFR 3560, *subpart N*]. The approval process allows the Agency to assess the impact of the potential prepayment and, when necessary, offer the borrower incentives to forgo prepayment and maintain the affordability of the housing. This chapter explains prepayment requirements and describes the prepayment request and approval process.

15.2 OVERVIEW OF THE CHAPTER

The key decision points in the prepayment process are shown in Exhibit 15-1 below. For a detailed map of the process, see **Attachment 15-A**.

This chapter addresses the process in five parts:

- Section 1 outlines the key eligibility requirements for participating in the process and obtaining approval to prepay.
- Section 2 describes requirements and procedures for processing and evaluating prepayment requests for loans closed before 1979 or loans with no restrictive agreements.
- Section 3 describes requirements and procedures for processing and evaluating prepayment requests for loans closed between 1979 and 1989 that have restrictive agreements. This section also describes the process of offering the property for sale to nonprofit organizations and public agencies.
- Section 4 discusses properties subject to special circumstances, including foreclosure, bankruptcy, acceleration, and the advance payment of accounts.

Office of Rental Housing Preservation

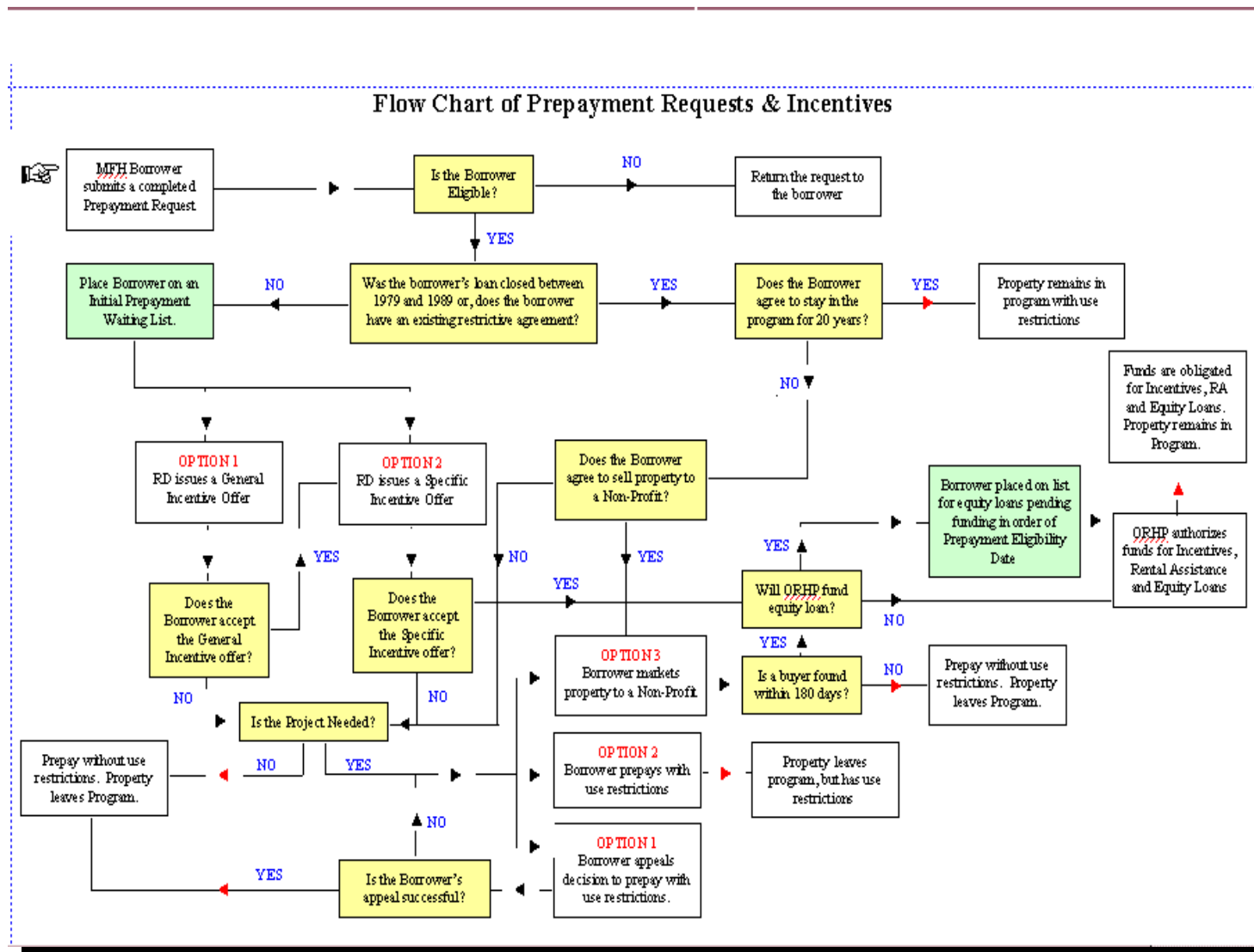
The Office of Rental Housing Preservation (ORHP) was established to ensure a standard approach to the prepayment decision-making process. ORHP will approve all incentive offers made by the Field Offices and authorize the closing of these offers.

Through PRE-TRAC, ORHP should be kept informed of the prepayment request's progress through the process. Field Offices should inform ORHP when:

- A prepayment request is received
- A request is to be removed from the list
- An incentive offer is developed and ready for ORHP approval before being offered
- A borrower accepts incentives
- A borrower rejects an incentive offer
- The State Office is ready to process a transfer to a nonprofit or public body
- The State Office requests prepayment with or without RUPs.

Loan Servicers should use PRE-TRAC, which is an internet-ready database application that allows Loan Servicers to process multi-family prepayment requests.

Exhibit 15-1



SECTION 1: PRESERVATION AND ELIGIBILITY FOR PREPAYMENT

15.3 OVERVIEW OF THE SECTION

This section covers key eligibility requirements that apply to prepayment process including:

- Determining eligibility to submit a prepayment request;
- Meeting with the borrower;
- Notifying tenants;
- Receiving a prepayment request and conducting a completeness review; and
- Determining prepayment feasibility.

15.4 BORROWERS ELIGIBLE TO REQUEST PREPAYMENT [7 CFR 3560.652]

Before submitting a prepayment request, borrowers should confirm that they are eligible to prepay and that they are required to submit a prepayment request. Loans made on or after December 15, 1989 to build or acquire new multi-family housing units are prohibited from prepayment.

15.5 MEETING WITH THE BORROWER

Whenever Loan Servicers receive an inquiry concerning prepayment, they should invite the borrower in for a meeting. If the borrower begins the prepayment request process with an understanding of the steps involved and the incentives available, the process is more likely to proceed with fewer miscommunications and delays.

At the meeting, the Loan Servicer should:

- Provide the borrower with a prepayment request application (see **Attachment 15-C**)¹ and review the list of items to be submitted. Answer any questions regarding the submissions. Make clear that a complete request includes evidence that the borrower is able to prepay the loan and market information to determine the feasibility of conventional use and the potential impact of the prepayment.
- Explain the prepayment process including the procedures for requesting prepayment, the offer of incentives, and the sale to nonprofit organizations or public agencies.
- As part of the application, the borrower must submit a market study performed by a professional market study provider paid for out of non-project funds. Projects of less than 12 units may submit the required market information without engaging a professional. The information required in the market study is listed on the application form.

- Recommend that the borrower hold a meeting with tenants to inform them of the prepayment request and explain the implications of the prepayment process for tenants. The borrower may invite other affordable housing agencies to this meeting to discuss options with the tenants. The Loan Servicer may attend this meeting as well.
- Describe the incentives that are available and explain that the offer will depend on the value of the borrower's project and its potential for conventional use. (**Attachment 15-B** provides a description of incentives and the incentive development process that can be given to the borrower.)
- Explain the restrictive-use provisions that will apply if the borrower accepts the Agency's offer of incentives.

15.6 TENANT NOTIFICATION REQUIREMENTS [7 CFR 3560.654]

Throughout the prepayment process, the Agency and the borrower both have a responsibility to inform tenants of the status of the prepayment request.

- **Initial Notice.** Within 30 days of the receipt of a complete request, the Loan Servicer must send a notification to each tenant in the project. A sample letter is attached as **Attachment 15-D**.
 - ◇ The Agency may deliver the notices to the borrowers by mail or directly. It is a good practice to send the notices in a way that confirms receipt (e.g., certified mail or hand delivery with a signed receipt).
 - ◇ The Agency should also send copies of the notification to the borrower and the management agent because the borrower must post copies of the notifications in public areas in the project. These notices must remain posted until the next notice providing an update on the status of the prepayment request is sent.
 - ◇ The borrower must provide copies of the notifications to any tenants who occupy units after these notices were sent.
- **Subsequent Notices.** To keep the tenants informed of the progress of the prepayment request, additional notifications are sent after key decisions in the process are made. These notices should be sent, posted, and provided to new tenants, as described for the initial notice. A list of appropriate times to send these notices is provided in Exhibit 15-2.

Tenants are often alarmed by the prospect of prepayment and uninformed about its implications for their housing situation. The Agency recommends that owners hold a meeting early in the request process. Items to cover at such a meeting include:

- The meaning of the first tenant notification letter;
- The steps in the prepayment process;
- Potential outcomes for the property;
- Alternative housing options for the tenants; and
- Tenants' eligibility for LOPE letters.

- **Other interested parties.** Whenever Loan Servicers provide notices to tenants regarding the prepayment process, they must also notify other interested parties such as nonprofit organizations and public agencies.

Exhibit 15-2

List of Notices to be Provided to Tenants During the Prepayment Process

The following notifications must be sent to tenants at the times indicated below. These notices must be sent to individual tenant households and posted in the project.

1. Within 30 days of receipt of the prepayment request:

Tenant Notification #1: This notice must be sent within 30 days of receipt of a complete prepayment request. This letter informs tenants that the borrower has submitted a request to prepay. This letter may be coordinated with a meeting including the borrower, the tenants, and the Agency.

2. After a decision has been made to accept prepayment or offer incentives:

Tenant Notification #2A: If the borrower's prepayment request is rejected, the Loan Servicer will send a letter to the tenants informing them that prepayment will not take place. If there is an appeal, this letter should be delayed until the outcome of the appeal is known.

Tenant Notification #2B: If the borrower is permitted to prepay without use restrictions, the Loan Servicer will send a letter to the tenants informing them of the prepayment providing them information on their rights (such as reimbursement of relocation costs). This letter must be sent 60 days prior to prepayment.

3. After the offer of incentives has been accepted or rejected:

Tenant Notification #3A: If the borrower accepts the incentives and related use restrictions, the Loan Servicer will send tenants a letter informing them of the outcome and describing the use restrictions.

Tenant Notification #3B: If the borrower rejects the incentives, and decides to prepay subject to use restrictions, the Loan Servicer will send letters to the tenants informing them that the borrower is prepaying subject to use restrictions and explaining their rights under the use restrictions. This letter must be sent 60 days prior to prepayment.

Tenant Notification #3C: If the borrower chooses to offer the property for sale to a nonprofit organization or a public agency, the Loan Servicer will send a letter to the tenants informing them that the borrower is offering the property for sale and explaining the sale process.

4. After the offer for sale is complete:

Tenant Notification #4A: If the borrower does not receive a bona fide offer within 180 days and is proceeding to prepay the loan, the Loan Servicer will notify tenants of the prepayment. This letter must be sent 60 days prior to prepayment (i.e., 60 days prior to the end of the 180-day marketing period). If a bona fide offer is received within the final 60 days of the marketing period, a new letter must be sent to the tenants as described in Tenant Notification #4B below.

Tenant Notification #4B: If the borrower receives an offer and sells the property, the Loan Servicer will send a letter to the tenants informing them of the sale and of their rights under the continuing use restrictions.

Tenant Notification #4C: If the borrower receives an offer and tenants have received Tenant Notification #4B, but subsequently, the purchaser fails to close the deal, the Loan Servicer will send a letter notifying the tenants that the sale was not completed, that the project may be prepaid, and of the tenants' rights in the event of prepayment.

15.7 REQUIREMENTS FOR PREPAYMENT REQUESTS *[7 CFR 3560.653]*

To be considered for prepayment, the borrower must submit a complete request at least 180 days before the expected date of prepayment. This time frame allows the Agency time to review the request, complete the applicable analyses, and offer incentives, if appropriate, prior to the prepayment date. If all required procedures can be completed in fewer than 180 days, the prepayment may occur at an earlier date.

Good Practice—Notification to Borrowers

Some borrowers may pay their loans on an accelerated schedule. As these borrowers approach 180 days from their last payment, the Agency should notify them of their status and of their obligation to submit a prepayment request. See paragraph 15.33 for more information on the advance payment of accounts.

A copy of all items to be submitted by the borrower can be found in PRE-TRAC on the Prepayment Application Checklist Screen.

15.8 RECEIPT OF PREPAYMENT REQUESTS

When a request for prepayment is received, the Loan Servicer must take the following steps to establish the date of receipt and begin a project file.

- Immediately upon receipt of a written prepayment request, date stamp the request and enter the date of receipt on the Timeline Screen, in PRE-TRAC, at Activity A00. If the completeness review shows the request to be complete (as described in paragraph 15.9) the date stamped on the request will be used as the date of receipt. (This date will be used by the National Office of Rental Housing Preservation [ORHP] to establish the borrower's position on the waiting list for incentives, if necessary.)
- Begin a project file. The Agency should have a separate file on each prepayment request that includes:
 - ◇ Application (with coversheet that summarizes all key project information);
 - ◇ Tenant notifications;
 - ◇ Project appraisal;
 - ◇ Documentation of all analysis performed;
 - ◇ Communications with the borrower; and
 - ◇ The mortgage document.
- Enter prepayment-related project data into MFIS and PRE-TRAC.

15.9 COMPLETENESS REVIEW

Within 10 days of receiving the prepayment request, the Loan Servicer must review it for completeness. This entails a brief look at the submission to ensure that all the items listed on page 2 of the application form are included (see **Attachment 13-C**).

- **Complete requests.** If the Loan Servicer determines that the request is complete, the Loan Servicer must:
 - ◇ Send a letter to the borrower providing the date of receipt of the request and informing the borrower that the Agency is reviewing the request and may ask for additional information.
 - ◇ Send a letter to tenants informing them that the borrower has submitted a request to prepay. This letter must be sent within 30 days of receiving the request. (As described in paragraph 15.6 above.) Also notify other interested parties at this time.
 - ◇ Complete a review of the request for the feasibility of prepayment. This review must be completed within 60 days of the receipt of the complete request and is described in paragraph 15.10.
- **Incomplete requests.** If the Loan Servicer finds that all items are not included, the incomplete request must be returned to the borrower with a letter listing the missing items. The borrower may submit a new request to begin the prepayment request process again. The date of receipt cannot be established until a complete request is received.

15.10 DETERMINATION OF PREPAYMENT FEASIBILITY

Within 60 days of the receipt of a complete application, the Loan Servicer must review the prepayment request to determine the feasibility of prepayment and enter the date of complete application into PRE-TRAC, at Activity A06 on the Timeline Screen.

To determine the feasibility of prepayment, the Loan Servicer must review the borrower's ability to prepay and the project's potential for conventional use. To be considered "feasible", the borrower must have the ability to prepay the loan, as defined in subparagraph A and the project must have a feasible conventional use, as defined in subparagraph B.

A. Ability To Prepay

To receive an offer of incentives, the borrower must demonstrate the ability to prepay the Agency loan. It is not in the Agency's interests to offer incentives to a borrower who does not have the financial capacity to prepay the loan since there is little risk that the borrower will actually prepay and remove the project from the program.

The borrower may be planning to finance the prepayment in one of three ways:

- From the borrower's own resources;
- With financing from a lender or other third party; or
- By selling the project.

Regardless of the source of funds, the borrower must be able to show that the proposed source of financing is available. The Loan Servicer must review the borrower's prepayment request to ensure that the borrower has submitted sufficient evidence that the funding is available, as described below.

1. Borrower's Funds

If using his or her own funds, the borrower must provide:

- A balance sheet and income statement showing that sufficient cash is available to pay the loan principal or that assets of sufficient value are available and can be readily converted to cash; and
- Certification that the income or assets are not pledged elsewhere (e.g., to other prepayment requests or other loans).

2. Third Party Lender

If obtaining a loan, the borrower must provide an original copy of the pre-commitment letter from the lender, stating:

- The rates and terms of loan;
- The amount financed; and
- A description of the security of the loan.

3. Sale

If the borrower is planning to sell the project, the borrower must submit a purchase agreement and documentation of the purchaser's ability to pay. The purchaser's ability to pay can be documented in the same manner as the borrower's, as described in subparagraph 1 above.

B. Potential For Conventional Use

It is not in the Agency's interest to use its limited incentive resources to retain properties in the program that do not have a realistic potential to convert to conventional use. Therefore, the Loan Servicer must review the borrower's request to verify that the project can in fact operate as a conventional property.

The borrower's prepayment request will provide information on the projected conventional use of the property, including the proposed budget and market information. To determine if the proposed conventional use is feasible, the Loan Servicer must answer the following questions:

- Is there a need for the proposed use? Use the market information to determine the demand for comparable conventional units in the market area.

- Is the proposed use feasible? Make sure that there are no zoning restrictions or other factors that make the borrower's proposed use infeasible.
- Will projected rents or income support the proposed budget? Review the proposed budget to determine the rent needed to break even. Use the information provided in the market study to determine if the market will support this rent.
- Will projected rents or income support the transition to the new use? Review the borrower's description of planned improvements. Confirm that the proposed budget addresses these items.

15.11 ELIGIBILITY DETERMINATION

If the Loan Servicer determines that the borrower is eligible with a complete prepayment request and prepayment is feasible, the Loan Servicer continues to process the request. If the borrower is not eligible for prepayment, the Loan Servicer notifies the borrower in writing stating the reasons that the borrower is not eligible for prepayment.

For loans that were closed prior to 1979, or if the loan does not have any existing restrictive agreements, the Loan Servicer follows the process described in Section 2 below. If the borrower's loan closed between 1979 and 1989 and has a restrictive agreement, the Loan Servicer follows the process described in Section 3.

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SECTION 2: LOANS CLOSED BEFORE 1979 OR LOANS WITH NO RESTRICTIVE AGREEMENTS

15.12 PREPAYMENT WAITING LIST

For borrowers who meet the eligibility requirements of Section 1 and who have loans that closed prior to 1979 or have no restrictive agreements, the Loan Servicer will place the borrower on an initial prepayment waiting list using PRE-TRAC.

15.13 MAKING THE INCENTIVE OFFER—OVERVIEW

To encourage borrowers to forgo prepayment, the Agency offers incentives to all borrowers applicable under this section. Paragraphs 15.14 to 15.21 below describe the process for offering incentives and responding to the borrower's acceptance or rejection of Agency incentives.

15.14 GENERAL INCENTIVE OFFER

At the discretion of the Agency, the Loan Servicer may make a general incentive offer to the borrower before developing the specific incentive package. The Loan Servicer should make a general offer only if the borrower indicates that any specific incentive offer will be rejected. From the date of the general offer, the borrower has 30 calendar days to accept or reject the offer.

- If the borrower rejects the general offer in writing, the Agency will not develop a specific incentive offer. The Agency will determine the impact of prepayment as described in paragraph 15.22.
- If the borrower accepts the general offer, the Agency will develop a specific incentive offer in accordance with this section.
- If the borrower rejects the general offer in writing after 30 calendar days, the Agency will not complete the specific incentive offer and will consider all incentives rejected.

15.15 SPECIFIC INCENTIVE REQUIREMENTS *[7 CFR 3560.656]*

Specific incentive offers are subject to the following requirements.

- **Value of incentive offer.** The incentive offer must be based on the Agency's assessment of:
 - ◇ the amount necessary to provide a fair return on the investment of the borrower;
 - ◇ an amount that will not cause project rents to increase above conventional rents for comparable units; and
 - ◇ the least costly alternative for the federal government that is consistent with extending the low-income use of the property.

- **Eligible recipients.** The Agency will offer incentives only to borrowers who have met the requirements outlined in Section 1.
- **Time frame for offer response.** The Agency must develop the offer within 60 days of completing the review for feasibility and impact. The borrower must respond to an incentive offer within 30 calendar days. If no answer to the offer is received within 30 calendar days, the Agency must void the incentive offer.
- **Reserve requirements.** At the time the incentive is developed, the maximum reserve amount must be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project based on the project's capital plan. The Agency may require an additional deposit to the reserve account from the incentive package and/or reduce the incentive in order to allow rents to be increased to fund the reserve at a level necessary to meet capital needs.
- **Capital Improvements.** Any necessary capital improvements must be addressed (monies set aside) prior to receiving any incentives.
- **Consolidation and reamortization of loans.** If a project has more than one Agency loan, existing project loans must be consolidated and reamortized unless consolidation is not necessary to maintain feasibility of the project for the current tenants or the level of monthly rental subsidies must be reduced.
- **Appraisal requirements.** An appraisal is required to provide the Agency the information needed to establish the appropriate value of the incentive offer. It is the Agency's responsibility to obtain the appraisal.

15.16 TYPES OF INCENTIVES [7 CFR 3560.656(c)]

The Agency may offer the borrower one or more of the items discussed below as incentives to forgo prepayment.

The following considerations apply to the development of the incentive package:

- Incentive offers must not be made without sufficient rental assistance to protect current tenants against rent overburden.
- If the incentive package involves a rent increase, the Agency must approve the rent increase in accordance with budget approval procedures outlined in Chapter 4, Financial Management, of the Asset Management Handbook. In no case may the rent increase cause rents to increase above conventional rents for comparable units.
- An Agency equity loan must be the last incentive option considered in developing an offer.

A. Rental Assistance

The Agency may offer rental assistance if the project tenants will experience rent overburden as a result of the incentive offer.

B. Increase in Annual Return

The Agency may offer an increase in the amount of the borrower's annual return on investment by one or both of the following two methods:

- The Agency may recognize the borrower's current equity in the project at the original rate of return, and/or
- The Agency may increase the borrower's rate of return on the original equity.

The actual withdrawal of the return remains subject to conditions specified in 7 CFR Subpart G. (See Chapter 4, Financial Management, of the Asset Management Handbook for guidance).

C. Excess Section 8 Rents

For projects with project-based Section 8 assistance, the Agency may permit the borrower to receive rents paid to the project in excess of the amounts needed to meet annual project operating and maintenance expenses, debt service, and reserve requirements. This payment is received in a lump sum.

In these cases, the reserve account will be adjusted to provide adequate funding for long-term capital repairs and maintenance based on the project's capital plan.

D. Project Conversion Or Modification Of Interest Rate

The Agency may agree to convert full-profit loans to limited profit Plan II loans or increase the interest subsidy for loans with Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

E. Agency Equity Loans

The Agency may make an equity loan to the borrower. The Agency may offer an equity loan only after it determines that all other incentive options will not result in an adequate incentive offer. The equity loan may not exceed the difference between the current unpaid loan balance and 90 percent of the project's value appraised as unsubsidized conventional housing.

The following requirements apply to equity loans:

- Labor Housing projects are not eligible for equity loans.
- The loan must not adversely affect the borrower's repayment ability.

- Equity loans may be processed and closed with the current borrower or any eligible transferee.
- If the equity loan is made in conjunction with excess Section 8 funds, the equity will be paid using excess reserves before an equity loan is made.

F. Third Party Equity Loans

A third party equity loan is not considered an incentive, but it is an option the Agency may give the borrower at the same time it makes an incentive offer.

- All incentive requirements described in paragraph 15.15 apply to third party equity loans.
- An offer to allow the borrower to receive a third party equity loan must be included in the incentive calculation worksheet located in PRE-TRAC or by completing an Excel Spreadsheet version for consideration in the Agency's incentive offer.
- In exchange for taking a third party equity loan, the borrower must agree to the applicable 20-year use restrictions and all relevant requirements under this chapter.
- The third party lender must take a subordinate lien position to the Agency.
- The third party lender must agree in writing that foreclosure action under its lien will not be initiated before holding a discussion with the Loan Servicer and after giving a reasonable period of notice to the Agency.
- A third party equity loan may not be associated with a transfer of ownership.

15.17 DEVELOPMENT OF THE INCENTIVE OFFER

Loan Servicers will develop the incentive offer based on calculations outlined in PRE-TRAC or using the electronic version in the form of an Excel Spreadsheet. Loan Servicers should complete the worksheet, according to the directions in PRE-TRAC (also provided in **Attachment 15-F** for the electronic version) and submit it to ORHP prior to making the offer to the borrower.

To help ensure the consistency of incentive offers, ORHP will review each completed worksheet and approve the proposed incentives before the offer is made to the borrower.

15.18 AGENCY OFFER OF INCENTIVES

Once ORHP approves the incentive package, the Loan Servicer must send a letter (located in PRE-TRAC) to the borrower outlining the choice of incentives and informing the borrower that he or she must respond to the offer within 30 days.

15.19 BORROWER ACCEPTANCE OF INCENTIVES AND SUBSEQUENT ACTIONS [7 CFR 3560.657]

If a borrower accepts the Agency's offer of incentives, both the borrower and the Loan Servicer have a number of responsibilities.

A. Borrower Acceptance

If the borrower accepts the Agency's offer of incentives, the borrower must complete the following actions:

- The borrower must agree to restrictive-use provisions that prohibit prepayment for 20 years and adopt appropriate amendments to the project's loan documents and rental assistance agreements. See **Attachment 15-G** for the amendment language.
- If the incentive offer accepted includes an Agency equity loan, the borrower must complete an application for the equity loan and the borrower must remain eligible for it. For additional information on how to process the equity loan, refer to Chapter 11, Subsequent Loans, of the Loan Origination Handbook.
- If the incentive offer accepted includes rent increases, the borrower must follow program requirements for rent increases. See Chapter 4, Financial Management, of the Asset Management Handbook.

B. Closing the Incentive Offer

To close the incentive offer the Loan Servicer must take the following steps:

- Prior to closing, notify ORHP via PRE-TRAC to indicate that the borrower has accepted the incentive offer and to request the allocation of equity loan funds or RA (as appropriate).
- ORHP will authorize all incentives and notify the State Office of the authorization.
- Insert appropriate restrictive-use provisions in the loan documents and rental assistance agreements (e.g., the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement) with consultation from OGC.
 - ◇ **For equity loans.** Execute a new loan agreement/resolution, promissory note, and mortgage and convert to Plan II if needed. Follow other loan closing procedures as described in the Loan Origination Handbook.
 - ◇ **For RA or increase in owner return.** Execute a new Interest Credit and Rental Assistance Agreement with the borrower and change the loan agreement/loan resolution as necessary.
- Notify tenants and other interested parties that prepayment will not take place.

C. Transfers

If a transfer is to take place simultaneously with the Agency incentive offer, a complete transfer application package must be submitted as described in Chapter 7 of this handbook.

- If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to reconsider whether to accept the original incentive offer or find another transferee.
- In some cases, the Agency may make an offer of incentives contingent on the successful transfer of the project to an acceptable purchaser. The Agency may offer a smaller incentive if the transfer does not take place.

15.20 INSUFFICIENT FUNDING FOR INCENTIVES

In some cases, the borrower may be offered incentives that cannot be provided immediately. For example, the Agency may lack funding for equity loans or sufficient RA. If a borrower accepts an incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower will be removed from the incentive waiting list. The borrower then has three options:

- The borrower may offer to sell the project to a nonprofit or public agency as described in Section 3.
- The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. If this option is chosen, the Agency will not renegotiate the incentive offer.
- The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives. If the borrower chooses this option, the borrower may submit a new request for prepayment and repeat the prepayment process.

15.21 BORROWER REJECTION OF INCENTIVE OFFER AND SUBSEQUENT ACTIONS [7 CFR 3560.658]

If the borrower rejects the incentive offer, the Loan Servicer must make a determination of the project's impact and whether it is needed, in accordance with paragraph 15.22 below.

If the Agency determines that the project is not needed and that there is no adverse impact on minorities, the borrower may prepay without restrictions. After prepayment, the property leaves the program. Processing the prepayment is described in subparagraph B below.

If the project is needed, or there is an adverse impact, the Loan Servicer must send the borrower a letter informing the borrower of four options:

- The borrower may prepay the Agency loan subject to use restrictions. The letter should describe the applicable use restrictions. Guidance on how to determine the appropriate use restriction is described in paragraph A below.
- If the borrower does not want to accept the use restrictions, the borrower may offer the property for sale to nonprofit organizations and public agencies. This process is described in Section 3.
- The borrower may forgo prepayment and stay in the program.
- The borrower may appeal the decision to prepay with use restrictions. The borrower and Agency follow the appeal procedures described in Chapter 1.

The letter should also request the borrower to send a written response indicating the borrower's intentions within 30 days.

A. Determining the Appropriate Restrictive-Use Provisions

If the borrower chooses to prepay the loan subject to restrictive-use provisions, the Loan Servicer must determine the appropriate use restrictions to apply. The analysis for making this determination follows:

- **For prepayments that will have an adverse impact on minorities.** If the borrower chooses to prepay subject to use restrictions, the Agency must make a determination regarding the impact of the prepayment on minorities. Loan Servicing staff should rely on Civil Rights staff to make this determination.
 - ◇ Relevant factors include:
 - ◆ The percentage of minorities residing in the project and the percentage of minorities residing in projects in the market area where displaced tenants are most likely to move;
 - ◆ The impact of prepayment on minority residents in the project and in the market area. Determine whether displaced minority tenants will be forced to move to other low-income housing in areas not convenient to their places of employment, or to areas with a concentrated minority population, and/or to areas with a concentration of substandard housing;
 - ◆ The vacancy trends and number of potential minority tenants on the waiting list at the project being prepaid and at other projects in the market that might attract minority tenants; and
 - ◆ The impact prepayment will have on the opportunity for minorities residing in substandard housing in the market area to have comparable decent, safe, and affordable housing, as is offered by the project being prepaid.

- ◇ If Civil Rights staff determine that the prepayment will have a negative impact on minorities, the borrower must adopt use restrictions that protect the affordability of the project over the long term.
- **For prepayments that will have an adverse impact on the adequacy of supply of affordable housing.** In projects where the prepayment does not have an adverse impact on minorities, the borrower is required to adopt use restrictions that protect the access of current tenants to adequate affordable housing. These provisions prohibit the borrower from raising rents for tenants who live in the property at the time of prepayment unless the rent increase is necessary to meet the operating costs of the project. (Their rents cannot be raised as a result of actions associated with prepayment.) The specific provisions of the use restrictions are provided in **Attachment 15-G.**

B. Processing the Prepayment

Prior to prepayment, the Loan Servicer must take the following steps:

- Establish the target date for the prepayment to occur;
- Prepare the prepayment figures based on the borrower's outstanding balance on the Agency loan; and
- Notify tenants and other interested parties of the prepayment and its implications. Tenants must be notified at least 60 days in advance of the prepayment date.

To finalize the prepayment, the Loan Servicer must:

- Document the borrower's satisfaction of the mortgage; and
- Place a deed restriction on the property to establish the use restrictions.

C. Monitoring Compliance With the Use Restrictions²

If a borrower prepays a loan and the project remains subject to continued restrictive use provisions, the following requirements apply after prepayment:

- The owner of the prepaid project (formerly the borrower) is responsible for ensuring that the restrictive-use provisions agreed to as a condition of prepayment are observed and must retain appropriate documentation to demonstrate compliance with the use restrictions.
- The owners must provide the Agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions establishing that these provisions are being met.
- The Loan Servicer must visit the site on an annual basis to perform an annual physical inspection.

- The Loan Servicer must also investigate any complaints from tenants or other parties regarding the violation of the use restrictions.
- The Loan Servicer must keep owner certifications and records of visits in the project file.

15.22 DETERMINATION OF PREPAYMENT IMPACT

One of the Agency's key goals in the prepayment process is to ensure that affordable housing opportunities exist for program eligible tenants. Therefore, one of the most important issues to address is the impact of the prepayment on project tenants. In cases where prepayment will have little or no impact on project rents or availability of units, the Agency has less interest in keeping the property in the program than in cases where prepayment will likely result in the displacement of project tenants.

To make this determination, the Loan Servicer will review the following information provided in the market study:

- Existence of comparable conventional units, their rents, and vacancy rates;
- Any plans to build a similar project in the market area; and
- Other subsidized units and the availability of rental assistance.

The goal of this analysis is to determine if tenants will lose their units or suffer from rent overburden. The steps involved in the analysis of impact depend on whether or not the project has rental assistance.

A. Prepayment Impact On Projects Without Rental Assistance

For these projects, the Loan Servicer must review the prepayment request, including market information, and address the following items:

- **Change in rents or loss of units.** The Loan Servicer must look at the impact of the prepayment on tenants' ability to stay in the project. This analysis depends on the proposed use of the project after prepayment and rents for comparable conventional units in the market area. (For example, if the proposed use of the project is conventional rental units, the Loan Servicer should compare rents in the project to conventional rents in the market area.) Likely rents should be compared to tenants' income to ensure that a change in rents will not result in rent overburden.
 - ◇ If the prepayment is not likely to result in an increase in rents above current rents or 30 percent of tenants' adjusted incomes, the prepayment is considered to have no adverse impact on project tenants.
 - ◇ If the prepayment is likely to result in an increase in rents that will create rent overburden, the Loan Servicer must consider the availability of alternative comparable housing as described below.

- **Availability of alternative housing.** If the proposed use of the project after prepayment is likely to cause an increase in rents or a loss of units, the Loan Servicer must assess the availability of comparable housing in the community. The Loan Servicer must determine if there is sufficient housing that is comparable in size and rent to house project tenants in the local community without causing them rent overburden.
 - ◇ If there is sufficient comparable housing in the local community to replace the units that will be lost after prepayment, then the prepayment is considered to have no adverse impact on project tenants.
 - ◇ If sufficient comparable housing is not available in the local community, the prepayment is considered to have an adverse impact on project tenants.

B. Prepayment Impact On Projects With Rental Assistance

If project tenants have rental assistance, the Loan Servicer must conduct the same analysis as described in paragraph A above. However, in assessing the availability of comparable affordable units, the Loan Servicer must identify comparable units with RA or other rental assistance such as Section 8 (as long as the tenants will have priority for these units).

- If sufficient comparable units with RA are available in the local community to house all tenants with RA (for example, if another Section 515 project in the local community has vacancies to house the tenants from this prepaid property), the prepayment is considered to have no adverse impact.
- If insufficient units with RA are available, the prepayment is considered to have an adverse impact on project tenants.

Exhibit 15-3 provides a quick overview of the full analysis of impact.

Exhibit 15-3
Analysis of Impact on Tenants

Step 1: Answer the following questions about rents and loss of units.

- A. Will prepayment result in an increase in tenant payments and if so, will this new payment be higher than 30% of the current tenants' incomes?

OR

- B. Will prepayment result in a loss of units?

If the answer to both A and B is no, there is no adverse impact on tenants.

If the answer to either A or B is yes, proceed to step 2.

Step 2: Answer the following questions about the availability of alternative housing:

- A. Are there sufficient comparable vacant units in the market area (as indicated by the market study) for displaced tenants to find alternative housing?

AND

- B. Are the tenant payments in these units equal to or less than the greater of their current rent or 30% of their income?

If the answer to both C and D is yes, there is no adverse impact on tenants.

If the answer to either C or D is no, there is an adverse impact on tenants.

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SECTION 3: LOANS CLOSED BETWEEN 1979 AND 1989 WITH A RESTRICTIVE AGREEMENT

15.23 APPLICABILITY OF SECTION

For borrowers whose loans have restrictive agreements and which closed between 1979 and 1989, Loan Servicers should follow the procedures in this section. For loans closed between 1979 and 1989 with no restrictive agreements, follow the procedures in Section 2.

15.24 REQUEST BORROWER TO REMAIN IN PROGRAM

The Agency will make an effort to enter into a restrictive-use agreement with borrowers who received section 514 or section 515 loans on which restrictive-use provisions are still in place, who received “restricted” loans, or who make a prepayment request and prepayment is feasible. If a borrower accepts the Agency’s request to enter into a 20-year restrictive use agreement, without prepayment, no further action is necessary.

If a borrower declines the Agency’s offer, the Loan Servicer should document this fact in writing, noting the date on which this information was obtained. The document should be included in the case file. The Servicing Officer should then proceed to review the prepayment process to determine the impact of prepayment.

15.25 SALE TO A NONPROFIT ORGANIZATION [7 CFR 3560.659]

A borrower who rejects the Agency’s offer to enter into a restrictive-use agreement may offer the project for sale to nonprofit or public agencies. A borrower who is being processed under Section 2 where the Agency’s incentive offer is rejected may offer the project for sale to nonprofit or public agencies. A borrower who accepts the incentives but does not receive them within 15 months of accepting them, may offer the project for sale to nonprofit and public agencies. This process can take up to 30 months to complete. At the end of this process, if the property has not been purchased, the borrower is permitted to prepay without restrictive-use provisions.

The sale process has several steps:

- The property must be marketed for 180 days as described in paragraph 15.27.
- If no offer is made within 180 days, the borrower may prepay the loan without use restrictions (see paragraph 15.31).
- Offers received within the 180 days must be treated as described in paragraph 15.28.
- If an offer is accepted, the purchaser must finalize the sale within 24 months. If the sale is not finalized, the borrower may prepay the loan without use restrictions (see paragraph 15.31).
- After a sale is completed, the Loan Servicer must oversee the transfer of the property and continue to monitor the project as a program property (see paragraph 15.30).

15.26 ESTABLISHING THE PROJECT VALUE

To establish the value of the property (as an unsubsidized conventional property) and hence, to determine an acceptable offer, two independent “as is” market value appraisals will be completed in accordance with Chapter 8 of the Loan Origination Handbook. The borrower must pay the expense of the borrower’s appraisal. The appraiser selected may not have an identity-of-interest with the borrower.

If the two appraisers fail to agree on the fair market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding. The Agency and the borrower shall jointly fund the cost of the appraisal.

15.27 MARKETING REQUIREMENTS

The Loan Servicer must ensure that the borrower takes appropriate actions to inform appropriate entities of the sale. The borrower must provide the Loan Servicer with appropriate documentation (e.g., copies of advertisements) to demonstrate that the following actions occurred.

- The borrowers must contact interested nonprofit organizations and public agencies from the list maintained by ORHP. They should also contact other interested organizations.
- The borrower must provide these entities with sufficient information regarding the project and its operations for interested purchasers to make an informed decision. This information must include the minimum acceptable bid prices based on the appraised market value (as discussed in paragraph 15.26). It should also state the preference for local entities, as described in paragraph 15.28.
- If an interested purchaser requests additional information concerning the project, the borrower must promptly provide the requested materials.
- The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

15.28 SELECTING AN OFFER

The borrower must accept any bona fide offer at or above the minimum acceptable bid price.

- **Requirements for nonprofit organizations and public agencies to purchase.** To buy and operate a multi-family housing project, a nonprofit organization or public agency must meet the requirements listed in Exhibit 15-4.

Exhibit 15-4
Requirements For Nonprofit Organizations And
Public Agencies To Purchase

- The purchaser must agree to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities. However, currently eligible moderate-income tenants will not be required to move.
- The purchaser must agree that no subsequent transfer of the housing and related facilities will be permitted for the remaining useful life of the housing and related facilities unless the Agency determines that the transfer will further the provision of housing and related facilities for low-income families and persons, or there is no longer a need for such housing and related facilities.
- The purchaser must show financial feasibility of the project including anticipated funding.
- The purchaser must certify on Form 1944-20 that there are no identity-of-interest relationships.
- The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with Subpart I.
- To be eligible to purchase properties, nonprofit organizations must meet the criteria outlined in 7 CFR Part 3650 subpart B. These requirements are discussed in Chapter 5 of the Loan Origination Handbook.

- **Preference for local nonprofit and public agencies.** Local nonprofit organizations and public agencies have priority over regional and national nonprofit and public agencies. The borrower may not accept an offer from a regional or national nonprofit organization or public agency during the first 60 days that the property is advertised.
 - ◊ If no offer from a local nonprofit or public agency is received in the first 60 days, the borrower may accept an offer from a regional or national nonprofit organization or public agency.
 - ◊ If more than one qualified nonprofit organization or public agency submits an offer to purchase the project, the Agency will give priority to qualified local nonprofit organizations and public agencies over regional and national nonprofit organizations and public agencies.
 - ◊ If additional criteria are needed to make a selection, the borrower must consider the organization's past success in developing and maintaining subsidized housing and the length of experience in developing and maintaining subsidized housing. Past success is given priority over length of experience when comparing equal offers.

- **Approving an offer.** The Loan Servicer must approve the borrower's acceptance or rejection of any offer for purchase. If the borrower receives an offer, he or she must notify the Loan Servicer of the offer and whether or not he or she wants to accept the offer. The Loan Servicer must review the borrower's decision.
 - ◇ If the borrower wants to reject the offer, the Loan Servicer must concur with the borrower's reasons for rejection. If the Loan Servicer does not concur, the borrower must accept the offer.
 - ◇ If the offer is to be accepted, the proposed purchaser must submit appropriate documentation to the Agency to demonstrate eligibility for the transfer. The Loan Servicer must approve the transfer and then take appropriate steps to close the transfer. (See Chapter 5 for the procedures for transfer.)

15.29 LOANS MADE BY THE AGENCY OR OTHER SOURCES TO NONPROFIT ORGANIZATIONS AND PUBLIC AGENCIES

The Agency may make loans to nonprofit organizations or public agencies to facilitate the purchase of the project. Alternatively, the Agency may approve a loan from another entity. These loans must be approved as described in the Loan Origination Handbook. They may be made for either of the purposes described below.

- A loan may be made to enable the nonprofit organization or public agency to purchase a project at the appraised value.
- With proper justification, a loan may be made to help meet the project's first year operating expense if current operating funds are not sufficient. This loan may not exceed two percent of the project's appraised value.

The Agency may also make an advance of up to \$20,000 to a nonprofit organization or public agency to cover the costs to develop a loan application package or to close a loan to purchase a property.

15.30 POST-SALE REQUIREMENTS

Once the property has been sold to a nonprofit or public agency, the new owner of the property is subject to all applicable program requirements and use restrictions that applied to the property prior to the sale.

- The Loan Servicer must ensure that the transfer of the property takes place according to Agency rules and that the new owner is made subject to all applicable use restrictions (see Chapter 7).
- The Loan Servicer must notify tenants and other interested parties that the sale will take place.

- The Loan Servicer will monitor this property as it monitors all other program properties. (See Chapter 9, Monitoring Borrower Compliance, of the Asset Management Handbook.)

15.31 REQUIREMENTS FOR BORROWERS IF AN ACCEPTABLE PURCHASER IS NOT FOUND

If no purchaser is found for the property within the 180-day marketing period or if an offer is made but the purchaser fails to come up with the funds to complete the purchase within 24 months, the borrower is considered to have fulfilled the requirements for offering the property for sale. At this time, the borrower is permitted to prepay the Agency loan without use restrictions.

The Loan Servicer must:

- Send a letter to the borrower notifying him or her that prepayment is permitted; and
- Close out the application in PRE-TRAC.

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SECTION 4: SPECIAL CIRCUMSTANCES

15.32 PROPERTIES UNDER BANKRUPTCY OR FORECLOSURE

A. Bankruptcy

Bankruptcy proceedings will have no effect on contractual requirements for restrictive use.

B. Foreclosure

If a project that is subject to restrictive-use provisions is sold outside the program at a foreclosure sale, the Agency has no means to continue to enforce restrictive-use provisions after the purchase.

15.33 ADVANCE PAYMENT OF ACCOUNTS

When an Agency loan, which is not subject to prepayment prohibitions, reaches or falls below six remaining payments due to a borrower's voluntary advance payments or extra payments required by the Agency, the borrower will be notified that the final payment on the account cannot be accepted unless a prepayment request is made. The borrower will be required to submit all applicable information to a prepayment request.

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ATTACHMENT 15-A

OVERVIEW OF PREPAYMENT PROCESS

Outlined below is a summary of the conditions to be met for making key decisions related to the prepayment process.

What are the criteria for accepting a prepayment request?

- The borrowers' loans were closed before 1989.
- All items on the application checklist have been submitted.
- The borrowers submit proof of their ability to prepay their loans.

You may issue a general or specific incentive offer to a borrower if the following conditions are met:

- The application has been accepted (see criteria listed above).
- The existing loan is a Rural Rental Housing (RRH) loan or an Off-Farm Labor Housing loan.
- The loan closed prior to 1979.
- There are no restrictive-use provisions associated with the loan.

Note: If the borrower is inclined not to accept a specific incentive offer, you may proffer a general offer and proceed from there when the borrower declines the offer. If, however, the borrower accepts the general offer, you must then proceed with a specific incentive offer.

A borrower may prepay WITHOUT use restrictions when the following conditions are met:

- If the borrower rejects the general and/or specific incentive offers and the property is not needed.
- If the borrower appeals the decision to prepay with use restrictions, when the property is needed, and wins the appeal.
- If the borrower markets the property to a nonprofit organization and a buyer is not found within 180 days.
- If the borrower markets the property and a buyer is found, but the deal fails to close.

A borrower may prepay WITH use restrictions when the following conditions are met:

- If the borrower rejects the general or specific incentive offer and the property is needed.

A borrower can market the property to a nonprofit organization under the following circumstances:

- If the borrower's loan closed between 1979 and 1989 and the borrower does not wish to continue in the program, but agrees to sell the property to a nonprofit organization.
- If the borrower's loan closed between 1979 and 1989 and the borrower does not wish to continue in the program or sell to a nonprofit organization. However, a subsequent needs assessment reveals that minority tenants will be materially affected. In this case, the borrower is obligated to sell to a nonprofit organization.
- If a pre-1979 borrower declines both the general and specific incentive offers. A needs assessment reveals that the property is needed. The borrowers can then agree to sell to a nonprofit organization if he or she does not wish to prepay with use restrictions.
- If a pre-1979 borrower declines both the general and specific incentive offers, but a needs assessment reveals that the property is needed. The borrowers can then appeal the decision. However, if they lose the appeal, they can then agree to sell to a nonprofit organization if they do not wish to prepay with use restrictions.

A request is returned to the borrower under the following circumstances:

- If the borrower's loan closed after 1989.
- If the borrower's prepayment request is withdrawn or rejected.
- If the project is needed, the borrower is obligated to prepay with use restrictions. The borrower can then appeal. If the borrower loses the appeal, he or she may decide to withdraw the application rather than have to sell to a nonprofit organization.

ATTACHMENT 15-B
EXPLANATION OF INCENTIVE OFFERS

ATTACHMENT 15-C
PREPAYMENT REQUEST APPLICATION

ATTACHMENT 15-D
SAMPLE LETTERS TO TENANTS

Initial Tenant Notification of Owner's Intent to Prepay

CERTIFIED MAIL #_____

RETURN RECEIPT REQUESTED

[Insert Tenant Address]

TO: Tenants of [Project Name]

Rural Development (RD), and Agency of the Department of Agriculture, holds the mortgage on (Name of project). The owners of (project) have asked RD for permission to pay off their loan(s). RD will not give that permission until RD reviews several issues including how prepayment will affect you.

RD would like to know how you think prepaying the loan on this property will affect you, other tenants in the complex, people in the community, and any minorities living in this complex and community.

Notification of Sale to a Nonprofit Organization or Public Body

CERTIFIED MAIL # _____

RETURN RECEIPT REQUESTED

[Insert Tenant Address]

TO: Tenants of [Project Name]

Rural Development (RD) has reviewed relevant information concerning a request from your landlord (Insert Owner's Name) to pay off the RD loan on (Enter Name of Project). RD has decided that we cannot accept the payoff because we determined that tenants would be adversely affected by a prepayment. Therefore, RD has offered the owner an incentive to stay in program and not prepay the loan.

RD is considering providing a loan to **[Insert name of new nonprofit or public body]**, a nonprofit organization/public housing authority, to finance the owner's equity in the property and to purchase the property in exchange for an extension of the low- and moderate-income use of the housing. **[Insert name of new entity]** would be required to continue to use the property for the purpose of housing very low- and low-income people eligible for occupancy as provided in RD regulations during the remaining useful life of the project. You may remain in the project throughout the remaining useful life of the project, and as long as you remain eligible or wish to occupy your apartment/unit. Rents, other charges, and conditions of occupancy will be set to meet these conditions. **[Insert name of new entity]** would only be released from these obligations when the government determines that (1) there is no longer a need for such housing; (2) that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of **[insert name of new entity]**. The restrictions are intended to protect only very low- and low-income individuals and families for the remaining useful life of the project. These restrictions will not be superceded by new restrictions imposed by any subsequent transfers of the property. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions.

Information regarding the approval of the prepayment can be reviewed at the Rural Development Area Office located at **[Insert address]**. Please call ahead to arrange an appointment if you wish to review this information.

If you have any questions, please contact me prior to **[enter date]**.

Sincerely,

Rural Development Specialist

ATTACHMENT 15-E
INCENTIVE CALCULATION WORKSHEET AND DIRECTIONS

ATTACHMENT 15-F

RESTRICTIVE-USE PROVISIONS

(a) Clauses required for active borrowers with housing projects subject to restrictive-use provisions as a result of a loan making or servicing action. The restrictive-use provisions must be contained in the loan documents or security instruments. The restrictions are applicable for a term of 20 years. All loans or servicing actions meeting the criteria described in paragraphs (1), (2), and (3) below, must include the following clause in loan documents.

“The borrower and any successors in interest agree to use the housing project for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence during this 20-year period beginning (the date the last loan on the housing project is obligated or the date the housing project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or an incentive agreement, authorized under this subpart). Until (date), no eligible person occupying the housing project shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Rural Housing Service determines that there is no longer a need for such housing or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing, as well as the Rural Housing Service, may seek enforcement of this provision.”

(1) All loans approved after December 21, 1979, but prior to December 15, 1989.

(2) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989.

(3) Any loan approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action in accordance with subparts I and J of 7 CFR 3560, or an incentive to accept restrictive-use provisions in accordance with 7 CFR 3560, subpart N.

(b) Clauses required for active borrowers with housing projects subject to restrictive-use provisions as a result of a loan making or servicing action when the loan is transferred to a limited partnership. The restrictive-use provisions must be contained in the loan documents or security instruments. The restrictions are applicable for a term of 30 years. All loans or servicing actions meeting the criteria described in paragraphs (1), (2), and (3) below, must include the following clause in loan documents.

“The borrower and any successors in interest agree to use the housing project for the purpose of housing people eligible for occupancy as provided

in section 514 or section 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence during this 30-year period beginning (the date the last loan on the housing project is obligated or the date the housing project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or an incentive agreement, authorized under this subpart). Until (date), no eligible person occupying the housing project shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Rural Housing Service determines that there is no longer a need for such housing or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing, as well as the Rural Housing Service, may seek enforcement of this provision.”

1. All loans approved after December 21, 1979, but prior to December 15, 1989.
2. Subsequent loans not made to build or acquire new units approved on or after December 15, 1989.
3. Any loans approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action in accordance with subparts I and J of 7 CFR 3560, or an incentive to accept restrictive-use provisions in accordance with 7 CFR 3560, subpart N.

(c) Clauses required for housing projects made subject to restrictive-use provisions when a loan is transferred to a nonprofit organization or public body. For housing projects being made subject to restrictive-use provisions because of a transfer to a nonprofit or public body, in accordance with 7 CFR 3560.659, the following clause must be inserted in the deed, conveyance instrument, loan resolution, and assumption agreement, as applicable.

“The borrower and any successors in interest agree to use the housing project for the purpose of housing very low- and low-income people eligible for occupancy as provided in Rural Housing Service regulations then in existence during the remaining useful life of the housing project. A tenant or person wishing to occupy the housing project, as well as the Rural Housing Service, may seek enforcement of this provision. Throughout the remaining useful life of this housing project, no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The borrower will be released during such periods from these obligations only when the Rural Housing Service determines that there is no longer a need for such housing. Further, the borrower will be released if other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of the borrower.”

The restrictions are intended to protect only very low- and low-income people for the remaining useful life of the project, unless the Rural Housing Service subsidy is removed without cause or it is determined there is no longer a need for the housing. These restrictions will not be superceded by new restrictions imposed by subsequent transfers. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions. Moderate-income applicants for the housing will continue to retain priority over ineligible applicants for the housing.

(d) Clauses and agreement required for prepaid projects, which were subject to restrictive-use provisions prior to the prepayment. Housing projects may only be prepaid if the title to the real property is made subject to the following restrictive-use provisions and incorporated in the security releases. The following Multi-Family Housing projects are subject to restrictive-use provisions contained herein:

- (1) Any loan on the project obligated between December 21, 1979, and December 15, 1989, or subsequent loan not made to build or acquire new units approved on or after December 15, 1989.
- (2) Any loan made subject to restrictive-use provisions as a result of a transfer or reamortization as contained in this subpart.
- (3) Any loan made subject to restrictive-use provisions as a result of accepting an incentive not to prepay as contained in 7 CFR 3560, subpart N.

The provisions provide protections to the same categories of tenants who were protected while the loan was in effect, to the same extent that the tenants were protected prior to the prepayment and for the length of time remaining under the restrictions prior to the prepayment.

“(Borrower Name), herein referred to as owner, and any successors in interest agree that the (Project Name), herein referred to as housing, will be used only as authorized under sections 514 and 515 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in existence until (insert date shown on existing restrictive-use provisions) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service, may seek enforcement of this provision. During the restricted period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The owner also agrees to keep a notice posted at the project, and in a visible place available for tenant inspection, for the remainder of the restrictive-use period, stating that the project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental

rates will be consistent with those necessary to maintain the project for (insert “low- and moderate-income” or “very low-and low-income” as shown on existing restrictive-use provisions) tenants for the remainder of the restrictive-use period.

Furthermore, the owner agrees to be bound by the applicable provisions of Rural Housing Service regulations specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification, and occupancy charges, and termination and eviction remain consistent with 7 CFR 3560, subpart D, and to adhere to applicable local, state, and federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until (Date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement, herewith, which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the Rural Housing Service to seek enforcement of the provisions.

Date: _____ Owner: _____

By: _____(Title)”

(e) Clauses and Agreement required for prepaid housing projects, which became subject to restrictive-use provisions at the time of prepayment. Multi-Family Housing projects that were not subject to restrictive-use provisions prior to prepayment may, generally, only be prepaid if the title to the real property is made subject to one of the following restrictive-use provisions and the provisions are filed with the security releases. The restrictive-use provisions apply to all loans made prior to December 21, 1979 that were not subsequently made subject to restrictive-use provision as a result of servicing actions after December 21, 1979. The restrictions will also

be used for sales of projects at foreclosure for projects not previously subject to restrictive-use provisions, provided the project is to remain in the section 514 or section 515 program. The conditions for which restrictive-use provisions are not required are contained in 7 CFR 3560.652.

These provisions are used when the owner agrees to restrictive-use provisions for a minimum of a 20-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public Rural Housing Service in accordance with Rural Housing Service regulations upon termination of the 20-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement contained herein.

“(Owner Name), herein referred to as owner, and any successors in interest agree to use the (Project Name), herein referred to as housing, as required in 7 CFR 3560, subpart N and other regulations then in existence during the 20-year period beginning (date of last loan or servicing action) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service may seek enforcement of this provision. Prior to (date period ends) no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the housing remained in the government program. The owner also agrees to keep a notice posted at the housing project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the housing project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the housing project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (date), the housing project will be offered for sale to a qualified nonprofit organization or public body, as determined by the Rural Housing Service.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR 3560, subpart E, and specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR 3560, subpart D, and to adhere to applicable local, state, and federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the

regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until (insert date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable RHS regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____ Owner: _____

By: _____(Title)”

(f) Clauses and Agreement required for housing projects subject to restrictive-use provisions at the borrower’s election to allow prepayment. These provisions are used after the owner rejects incentives or declines an additional restrictive-use period, or when the owner agrees to restrictive-use provisions for a minimum of a 10-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public Rural Housing Service in accordance with Rural Housing Service regulations upon termination of the 10-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement herein contained.

“(Owner Name), herein referred to as owner, and any successors in interest agree to use the (Project Name), herein referred to as housing, as required in 7 CFR 3560, subpart N and other regulations then in existence during the 10-year period beginning (date of last loan or servicing action) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for occupancy, as well as the Rural Housing Service, may seek enforcement of this provision. Prior to (date period ends) no eligible person occupying or wishing to occupy the housing project shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the housing remained in the Rural Housing Service program. The owner also agrees to

keep a notice posted at the housing project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the housing project is to be used in accordance with section 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the housing project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (date), the housing project will be offered for sale to a qualified nonprofit organization or public body, as determined by the Rural Housing Service.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR 3560, subpart D, and specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR 3560, subpart D, and to adhere to applicable local, state, and federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until (insert date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable RHS regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____ Owner: _____

By: _____(Title)”

(g) Loans with current restrictive-use provisions (all loans were obligated and applicable servicing actions took place for the project over 20 years prior to prepayment). These provisions are used when the loan is currently under restrictive-use provisions and the owner enters into an agreement to immediately attempt to offer the project for sale to a nonprofit organization or public Rural Housing Service in accordance with 7 CFR 3560.659. The borrower will also be required to execute the Restrictive-Use Agreement herein contained. The owners and any successors in interest agree to immediately offer to sell the housing and related facilities to a qualified nonprofit organization or public Rural Housing Service, as determined by the Rural Housing Service.

“(Name of Borrower), herein referred to as owner, and any successors in interest agree to immediately attempt to sell the (Name of Project), herein referred to as housing and related facilities to a qualified nonprofit organization or public Rural Housing Service, as determined by the Rural Housing Service, in accordance with the provisions of 7 CFR 3560, subpart N. The owner agrees to use the housing as required in 7 CFR 3560, subpart N, or other regulations then in existence during the sales period for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing as well as the United States may seek enforcement of this provision. Prior to a sale to a nonprofit organization or public Rural Housing Service, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been had the project remained in the RHS program. The owner also agrees to keep a notice posted at the housing project in a place available for tenant inspection, for the remainder of the sales period, stating that the housing project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates for tenants as of the date of the prepayment will be consistent with those necessary to maintain the housing project for low- and moderate-income tenants. A tenant, as well as the Rural Housing Service, may seek enforcement of this provision.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR 3560, subpart N, and specific to tenant rights and relations for the duration of the sales period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR 3560, subpart D, and to adhere to applicable local, state, and federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall

be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable RHS Servicing Office or other designated office within 30 days of the beginning of each calendar year until a sale to a nonprofit organization or public Rural Housing Service takes place:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____ Owner: _____

By: _____(Title)”

(h) Current Tenants Restrictive-Use Provisions. These provisions are used when the owner enters into an agreement that no current tenants will be displaced due to a change in the use of the housing or an increase in rental or other charges, as a result of prepayment, for as long as the current tenants wish to remain at the project. The provisions may only be used if it is determined by the Rural Housing Service that the conditions specified in this subpart, addressing the effect of prepayment on minorities, handicapped individuals, and families with children in the project and market area, can be met, allowing an exception from the requirement to offer the project for sale to a nonprofit organization or public body. The borrower will also be required to execute the Restrictive-Use Agreement contained herein.

“(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, for the purpose of housing low- and moderate-income people occupying the project at the time the prepayment was accepted, as required in 7 CFR 3560, subpart N, and other applicable Rural Housing Service regulations then in existence. No eligible person occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions for the tenants such that the effect will not differ from what would have been, had the project remained in the Rural Housing Service program. Existing tenants are protected to ensure that none experience new or increased rent overburden as a result of owner actions

until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a visible place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant voluntarily vacates. The notice will state that the project is to be used in accordance with sections 514 and 515 of title V of the Housing Act of 1949, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant as well as the United States may seek enforcement of this provision.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR 3560, subpart D, specific to tenant rights and relations for the remaining useful life of the project or until the last existing tenant voluntarily vacates the project. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and employment, lease agreements, rents or occupancy charges, and termination and eviction remain consistent with the provisions contained in 7 CFR 3560, subpart D, and to adhere to applicable local, state, and federal laws. The owner agrees to obtain Rural Housing Service concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that rents are established at appropriate levels. The owner agrees to make the documentation available for Rural Housing Service inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable Rural Housing Service Servicing Office or other designated office within 30 days of the beginning of each calendar year until the last existing tenant voluntarily vacates the project:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions and the Restrictive-Use agreement (herein contained) that sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable Rural Housing Service regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.”

ENDNOTES

¹ RHS: Please provide the materials for Attachment 15-C.

² RHS: Policy issues still exist in this paragraph. The requirements still need to be agreed on and made consistent in handbook and regulation.